

Message Text

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INFO OCT-01 EA-06 IO-10 ISO-00 AID-05 CEA-01 CIAE-00

COME-00 EB-07 FRB-01 INR-05 NEA-06 NSAE-00 RSC-01

OPIC-03 SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 SWF-01

OMB-01 DODE-00 DOTE-00 FMC-01 CG-00 COA-01 DLOS-03

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R 131841Z DEC 74

FM USMISSION OECD PARIS
TO SECSTATE WASH DC 4761
INFO AMEMBASSY ANKARA
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AMEMBASSY ROME
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E.O.11652: N/A

TAGS: EFIN, OECD

SUBJECT: PAYMENTS COMMITTEE DISCUSSION OF UN LINER CODE,
DEC. 9, 1974

REFS: (A) USOECD 28559

(B) USOECD 28462

(C) C(74)235 (ALSO USOECD A-120)

(D) C(74)225

1. SUMMARY: PC DISCUSSION OF UN LINER CONFERENCE COMPATABILITY WITH OECD INVISIBLES CODE REVEALED NO DIMINUTION IN DIFFERENCES OF OPINION AMONG OECD COUNTRIES ALREADY MADE APPARENT IN INVISIBLES COMMITTEE (IC) DISCUSSIONS THIS QUESTION (REF A). FAILING TO ACHIEVE AGREEMENT ON PROPOSED DRAFT ENTRY FOR COUNCIL MINUTES, ESPECIALLY AS MANY COUNTRIES WERE AS YET WITHOUT FINAL INSTRUCTIONS, PC DECIDED TO RECONSIDER IC REPORT AT NEXT MEETING ON JAN 13. AUSTRALIAN REP INDICATED HIS AUTHORITIES PROBABLY WOULD WISH TO SUBMIT EXTENSIVE COMMENTS SUPPORTING MINORITY VIEW IN REPORT AND CRITICAL OF CERTAIN AGREED PORTIONS OF REMAINDER OF REPORT. ALL COUNTRIES WERE REQUESTED TO SUBMIT SUCH COMMENTS IN WRITING BEFORE JAN 13 MEETING, INCLUDING ANY NEW VIEWS, ARGUMENTS OR POSITIONS. PC ALSO AGREED WITHOUT DISCUSSION TO SEND REF D (AMENDMENT JAPANESE RESERVATION TO CAPITAL CODE) TO COUNCIL FOR FORMAL APPROVAL. ACTION REQUESTED: SEE PARAS 10 AND 11 BELOW. END SUMMARY.

2. PC CHAIRMAN INVITED GENERAL COMMENTS ON IC REPORT WITH RESULT THAT EIGHT COUNTRIES SUPPORTED MAJORITY CONCLUSIONS (U.S., UK, SWITZERLAND, GREECE, SCANDINAVIANS), FOUR SUPPORTED MINORITY VIEWS (AUSTRALIA, FRANCE, JAPAN, TURKEY), AND SIX WERE WITHOUT INSTRUCTIONS (BELGIUM, GERMANY, ITALY, NEW ZEALAND, PORTUGAL, CANADA). REMAINING MEMBERS OF PC WERE ABSENT, INCLUDING DUTCH, IRISH AND ICELANDIC DELS WHO MIGHT BE EXPECTED TO SUPPORT LIMITED OFFICIAL USE

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MAJORITY VIEW.

3. SECRETARIAT (BERTRAND) CALLED ATTENTION TO FINAL COMMENTS IN PARAS 97 - 101 OF IC REPORT, WHICH WERE AGREED BY ALL MEMBERS OF IC, AND ASKED IF PC COULD ACCEPT THESE AS BASIS FOR POSSIBLE COMPROMISE POSITION IN COUNCIL. EIGHT COUNTRIES OF MAJORITY SUPPORTED THESE PARAS, AND WERE JOINED INFORMALLY BY PORTUGAL, WHILE

FRANCE SAID IT COULD ACCEPT PARAS 97 - 100, BUT NOT
PARA 101 WHICH RECOMMENDS THAT APPROPRIATE BODIES OF UN
PROVIDE FURTHER CLARIFICATION OF CODE. JAPAN AND
AUSTRALIA ALSO OPPOSED TO THIS PARA.

4. SWEDISH DEL TABLED PROPOSED DRAFT ENTRY (DRAFTED BY
U.S.), AFTER CONSULTATIONS WITH U.S., UK, SWITZERLAND,
NORWAY, FINLAND, DENMARK AND GREECE. DRAFT ENTRY HAS
BEEN CHANGED SLIGHTLY FROM DE PREPARED IN REF B. IT NOW
READS AS FOLLOWS:

"THE COUNCIL

(A) NOTED THE REPORT OF THE COMMITTEE FOR INVISIBLE
TRANSACTIONS ON THE COMPATIBILITY OF THE UNITED
NATIONS CONVENTION ON A CODE OF CONDUCT FOR LINER
CONFERENCES AND THE OECD CODE OF LIBERALISATION
OF CURRENT INVISIBLE OPERATIONS, C(74)235;

(B) FURTHER NOTED THAT ALTHOUGH A MAJORITY OF THE
COMMITTEE FOR INVISIBLE TRANSACTIONS CONSIDERS

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OIC-02 L-02 SS-15 NSC-05 /097 W

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INFO AMEMBASSY ANKARA

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THE LEGAL PROVISIONS OF THE UNITED NATIONS CON-
VENTION TO BE INCOMPATIBLE WITH THE OECD CODE, A
MINORITY DOES NOT ACCEPT THIS CONCLUSION; NEVER-
THELESS, ALL MEMBERS OF THE COMMITTEE FOR
INVISIBLE TRANSACTIONS RECOGNIZE THAT IN THE
IMPLEMENTATION OF THE CONVENTION THERE EXIST
POSSIBILITIES OF CONFLICT WITH MEMBER COUNTRIES'
OBLIGATIONS UNDER THE OECD CODE;

(C) AGREED THAT MEMBER COUNTRIES FULLY INTEND NOT TO
TAKE MEASURES IN CONNECTION WITH THE UNITED
NATIONS CONVENTION WHICH WOULD CONFLICT WITH THEIR
OBLIGATIONS UNDER THE OECD CODE;

(D) SUGGESTED THAT FURTHER CLARIFICATION OF THE
UNITED NATIONS CONVENTION BE OBTAINED FROM THE
UNITED NATIONS WITH REGARD TO THE ISSUES RAISED
IN CHAPTER III OF THE REPORT C(74)235."

5. ONLY THOSE COUNTRIES NOTED IN PARA 4 ABOVE SUPPORTED

DRAFT ENTRY IN ENTIRETY. FRANCE, JAPAN, TURKEY AND AUSTRALIA (ACTING WITHOUT INSTRUCTIONS) REJECTED PARA (D) AND LATTER THREE SUGGESTED MODIFICATIONS IN (B) AND (C). OTHER COUNTRIES RENEWED THEIR POSITION.

6. AUSTRALIAN DEL VOICED NUMBER OF CRITICISMS OF REF C. IN HIS VIEW, REPORT MIXES FACTUAL AND LEGAL ARGUMENTS AND UNDULY SPECULATES ON MEANING OF UN CONVENTION. SINCE IC NOT A LEGAL BODY, LEGAL VIEWS MAY BE IN DOUBT. PARA 63 GIVES ONLY ONE VIEW OF UN CODE AND HAS NO LEGAL SIGNIFICANCE. PARA 99 APPEARS LEGALLY INCORRECT (SEE PARA 14, REF A). LITTLE NEED FOR PART V OF REPORT, SINCE MANY COUNTRIES SEE NO INCOMPATIBILITY AND SUCH MATTERS SHOULD WAIT UNTIL AFTER COUNCIL DISCUSSION. HE BELIEVES THAT OECD CODE COVERS TRANSACTIONS BETWEEN SHIPPERS AND LINES, LIMITED OFFICIAL USE

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NOT BETWEEN SHIPPERS AND SHIPPERS OR AMONG SHIPPING LINES THEREFORE, OECD CODE NOT AFFECTED BY UN CONVENTION AND IT IS IRRELEVANT TO SAY THERE MIGHT BE INCOMPATIBILITY. AUSTRALIAN DEL STRONGLY SUGGESTED THERE WOULD BE NO AGREEMENT IN PC OR COUNCIL ON THIS QUESTION, AND IT SHOULD BE LEFT TO COUNCIL TO DISCUSS POSSIBLE "ARRANGEMENTS" FOR PRACTICAL SOLUTIONS.

7. OTHER COMMENTS: SWISS REP NOTED HIS SUPPORT OF MAJORITY VIEW WAS BASED ON PURELY LEGAL VIEW, ESPECIALLY SINCE SWITZERLAND HAS NO DIRECT INTEREST IN SHIPPING POLICY QUESTION. NEW ZEALAND REP, SPEAKING WITHOUT INSTRUCTIONS, SUGGESTED THAT GROUNDS EXISTED FOR SUPPORTING INCOMPATIBILITY VIEW, BUT ALSO IDEA THAT UN AND OECD INSTRUMENTS MIGHT BE MADE COMPATIBLE. FRENCH REP NOTED THAT REQUEST FOR UN REVIEW INAPPROPRIATE SINCE INTERPRETATION OF A DIPLOMATIC INSTRUMENT IS UP TO PLENARY REPS WHO DRAFTED IT, AND THEREAFTER TO INDIVIDUAL GOVERNMENTS WHO WILL SIGN. THUS, FRANCE DOES NOT RECOGNIZE RIGHT OF UN ITSELF TO INTERPRET UN CODE. U.S. REP RESPONDED THAT UN CLARIFICATION OF QUESTIONS RAISED IN REF A COULD HELP MANY INDIVIDUAL COUNTRIES MAKE SUCH INTERPRETATION OF UN CODE FOR THEMSELVES, STRESSING THAT SUCH CLARIFICATION WOULD IN NO WAY BIND MEMBERS. HE FELT THAT VIEWS EXPRESSED IN UN DELIBERATIONS BY OECD COUNTRIES WOULD BE HELPFUL IN SEEING WAY EACH INTERPRETED THE CONVENTION, PROVIDING A KIND OF LEGISLATIVE HISTORY ON THE QUESTION. UK AND MOST OTHER "MAJORITY" COUNTRIES SUPPORTED THIS VIEW. U.S. REP ALSO NOTED THAT EXISTENCE OF GREAT DIVERGENCE OF OPINION AMONG OECD COUNTRIES ON WHETHER UN CODE IS OR IS NOT COMPATIBLE WITH OECD CODE SHOULD GIVE PAUSE TO ALL MEMBER COUNTRIES IN MOVING TOWARD ADHERENCE TO UN INSTRUMENT. IN ADDITION, ADHERENCE TO UN CODE WOULD

CLEARLY CAUSE CONFLICT UNDER ARTICLE 1B OF OECD CODE
(PARA 96, REF C).

8. SECRETARIAT (BERTRAND) AGAIN ATTEMPTED TO PROMOTE
VIEW THAT NEXT STEP SHOULD BE DECISION IN COUNCIL ON FOR-
MAT AND FORUM FOR OECD CONSULTATIONS ON MARITIME POLICY,
IN EFFORT TO ACHIEVE TRADE-OFF AMONG MEMBERS WHICH WOULD
APPROPRIATELY TAKE INTO ACCOUNT ANY EFFECTS OF UN CODE
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ON OECD COUNTRIES OR CODE. U.S. AND SEVERAL OTHERS FELT
THIS TO BE SEPARATE QUESTION FROM ONE OF COMPATABILITY
BETWEEN TWO CODES. PREFERRED TO SEE COMPATABILITY QUES-
TION REVIEWED ON ITS OWN MERITS IN COUNCIL.

9. PC AGREED THAT SEC GEN WOULD MAKE SHORT ORAL REPORT
TO COUNCIL (IN VIEW OF INITIAL COUNCIL DIRECTIVE TO SUB-
MIT REPORT ON THIS QUESTION IN TIME FOR CONSIDERATION BY
COUNCIL BEFORE END 1974) INDICATING THAT IC HAD COMPLETED
ITS REPORT TO COUNCIL AND THAT PC WAS REVIEWING REPORT

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R 131841Z DEC 74

FM USMISSION OECD PARIS

TO SECSTATE WASH DC 4763
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AND WOULD PROBABLY BE IN POSITION TO FORWARD REPORT TO COUNCIL BY END JAN 1974. SECGEN WAS SPECIFICALLY INSTRUCTED NOT TO TRY TO SUMMARIZE PC VIEWPOINTS OR REPORT RESULTS.

10. COMMENT: U.S. SUPPORTED PROPOSAL FOR FURTHER CONSIDERATION OF IC REPORT IN PAYMENTS COMMITTEE, RATHER THAN SENDING IT FORWARD TO EXCOM, BECAUSE (A) IT DELAYS FINAL COUNCIL DISCUSSION AND MAY POSTPONE SIGNING OF UN CONVENTION BY SOME OECD MEMBERS; (B) SUCH DELAY WILL ALLOW MORE TIME FOR EC DISCUSSIONS OF COMPATABILITY BETWEEN UN CONVENTION AND TREATY OF ROME, WHICH MAY INFLUENCE SOME EC MEMBERS' POSITIONS, (C) IT GIVES US TIME TO MAKE REPRESENTATIONS IN CAPITALS OF UNDECIDED COUNTRIES IF WE SO DESIRE (SEE BELOW).

11. ACTION PROPOSED: WE NOTE THAT AT LEAST SIX MEMBERS OF PC (PARA 2 ABOVE) STILL HAVE NO INSTRUCTIONS AT POLITICAL LEVEL WITH REGARD TO THEIR POSITIONS ON COMPATABILITY. IN ADDITION, OTHER POSSIBLE SUPPORTERS OF U.S. POSITION (DUTCH, IRISH, ICELANDERS) WERE NOT REPRESENTED AT PC. WE WONDER IF DEPARTMENT WOULD CONSIDER IT USEFUL FOR EMBASSIES IN "UNDECIDED" COUNTRIES TO MAKE LOW-KEY APPROACH ASKING FOR REACTIONS TO IC REPORT, WHICH MISSION HAS POUCHED TO ALL ADDRESSEES IN REF A. WE SUSPECT THIS ISSUE IS BEING HANDLED BY SEVERAL DIFFERENT MINISTRIES IN VARIOUS COUNTRIES (ECONOMICS, FINANCE, MARITIME, FOREIGN AFFAIRS), AND MAY ONLY NOW BE COMING TO SERIOUS ATTENTION OF FOREIGN AFFAIRS SPECIALISTS. GERMAN DEL AT PC NOTED THAT HIS GOVERNMENT WILL DETERMINE ITS POSITION ON DEC 16.
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Message Attributes

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Draft Date: 13 DEC 1974
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Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
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